

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2273 - SB 2512

March 5, 2018

**SUMMARY OF BILL:** Increases the maximum per day per violation civil penalty, from \$10,000 to \$100,000, and increases the maximum civil penalty allowable for any series of violations from \$500,000 to \$1,000,000 as assessed by the Tennessee Public Utility Commission (TPUC) for a violation of the minimum federal safety standards for gas pipeline systems as established by the Natural Gas Pipeline Safety Act (NGPSA).

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue –**

**Exceeds \$25,000/Tennessee Public Utility Commission**

**Other Fiscal Impact – Municipal utility systems are required to be operated on a self-sufficient basis; therefore, any increase in expenditures will be offset with an increase in rates charged to customers. Any net impact is estimated to be not significant.**

**The Tennessee Public Utility Commission could experience a decrease in federal reimbursement funding of \$20,000 if the maximum civil penalty allowable is not raised.**

*Assumptions relative to administration:*

- The NGPSA was originally established in 1968; is administered nationally by the Pipeline Hazardous Materials Safety Administration (PHMSA) within the U.S. Department of Transportation and locally by TPUC; and its standards are applicable to all locally and privately operated entities which transport natural gas.
- Pursuant to 49 U.S.C. § 60122(a)(1), an entity which violates safety standards within the NGPSA, when determined by the U.S. Secretary of Transportation, is liable to the United States Government for a civil penalty of not more than \$200,000 per day per violation and a maximum civil penalty of \$2,000,000 for a related series of violations.
- According to TPUC, for the last four years TPUC has been issued an audit finding for civil penalties being below the limits recommended by PHMSA and raising the minimum civil penalty assessed within Tennessee will bring such penalties in line with national standards and avoid potential withholding of federal funding.

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- TPUC estimates if such civil penalties are not increased, PHMSA could withhold \$20,000 in current federal reimbursements.
- TPUC is a self-funded agency, receiving and remitting no funds to or from the General Fund.

*Assumptions relative to penalties currently assessed:*

- Under current law, pursuant to Tenn. Code Ann. § 65-28-108(b), the amount of civil penalty assessed may be compromised by TPUC; and when determining the amount of civil penalty assessed, TPUC is to consider the size of the business, the gravity of the violation, and any attempt to achieve compliance after notification of a violation.
- Based on information provided by TPUC, since 2013, a total of \$2,541,110 was assessed, with \$2,006,110 required to be expended within the operator's infrastructure to enhance safety standards. The remaining \$535,000, or 21 percent  $[(\$535,000 / \$2,541,110) \times 100]$ , was remitted to TPUC.
- Pursuant to Tenn. Code Ann. § 65-28-108, all penalties assessed which are paid to TPUC are utilized for enforcement of the NGPSA.

*Assumptions relative to increased maximum penalties:*

- The number of civil penalties assessed by TPUC is not estimated to increase as a direct result of this legislation.
- For any civil penalty which is assessed at a higher rate as a direct result of the proposed language, it is reasonable to assume that TPUC will require at least 75 percent of what is assessed be placed back into the operator's infrastructure to improve safety standards.
- A precise increase in state revenue to TPUC is dependent upon multiple unknown factors, such as the number of civil penalties that will be issued, the severity of the violation, the extent of the civil penalty which will be assessed in excess of what would have been assessed under the current maximum allowable rates, the size of the operator committing the violation, and if the cited operator refuses to achieve compliance after notification of a violation.
- It is estimated that the total rate of civil penalties assessed will increase by \$100,000 annually as a direct result of this legislation; however at least 75 percent of the civil penalty assessed will be expended by the operator to enhance safety standards of the operator's infrastructure, with the remaining 25 percent being remitted to TPUC.
- It is reasonably estimated that on average, TPUC will experience a recurring increase in state revenue estimated to exceed \$25,000 ( $\$100,000$  total increase in civil penalties x 25%) annually.

*Assumptions relative to locally operated utilities:*

- There are more locally operated utilities providing natural gas service statewide than privately operated utilities; however individual privately operated utilities are estimated to have larger service areas and more extensive infrastructure than those of individual locally operated utilities; and therefore privately operated utilities are more likely to receive higher civil penalty assessments than those of locally operated utilities.

- The total rate of civil penalties assessed by TPUC is estimated to increase by \$100,000 annually, with 70 percent of the total rate assessed being assessed against privately operated utilities and 30 percent against locally operated utilities.
- The proposed language will result in an increase in local government expenditures, with such expenditures either being remitted directly to TPUC or expended on improving infrastructure safety standards within the utility. The recurring increase in local expenditures is estimated to exceed \$30,000 annually (\$100,000 total assessment x 30%). Such expenditures would be mandatory for those local governments in violation; however, the act of committing a violation would be considered permissive.
- Under current law, pursuant to Tenn. Code Ann. § 7-82-403 and § 7-34-115, municipal utility systems are required to be operated on a self-sufficient basis; therefore any increase in expenditures will be met with an increase in rates charged to customers. As a result, the net impact to local government expenditures is considered not significant.

## **IMPACT TO COMMERCE:**

### **Increase Business Expenditures – \$70,000**

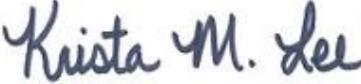
**Other Fiscal Impact – A precise impact to commerce and job creation in Tennessee cannot reasonably be determined due to multiple unknown factors.**

#### Assumptions:

- Individual privately operated utilities are estimated to have larger services areas and more extensive infrastructure than those of individual locally operated utilities; and therefore privately operated utilities are more likely to receive higher civil penalty assessments than those of locally operated utilities.
- A precise increase in business expenditures associated with increased rates of civil penalties is dependent upon multiple unknown factors, such as the number civil penalties will be issued to privately operated utilities, the severity of the violation, the extent of the civil penalty which will be assessed in excess of what would have been assessed under the current maximum allowable rates, the size of the operator committing the violation, and if the cited operator refuses to achieve compliance after notification of a violation.
- The proposed language will result in an increase in business expenditures for privately owned utilities, with such expenditures either being remitted directly to TPUC or expended on improving infrastructure safety standards within the utility. The average recurring increase in business expenditures is estimated to exceed \$70,000 annually (\$100,000 total assessment x 70%).
- Due to multiple unknown variables such as if privately operated utilities will utilize existing staff or if the hiring of additional staff will be required, and the extent of any new positions created in order to address safety improvements in infrastructure, a precise impact to jobs and commerce cannot reasonably be determined.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista M. Lee in black ink.

Krista M. Lee, Executive Director

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